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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,812	03/18/2004	Thomas D. Smith III	4056-003	4845
7590 Thomas D. Smith III 7008 Landing Rd. Oklahoma City, OK 73132		05/24/2007	EXAMINER HAYES, BRET C	
			ART UNIT 3641	PAPER NUMBER
			MAIL DATE 05/24/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/803,812	SMITH, THOMAS D.	
	Examiner	Art Unit	
	Bret Hayes	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 March 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10,38-48 and 55-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-10 and 38-48 is/are allowed.
- 6) Claim(s) 55-57 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 55 – 57 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 55 recites, in part, a “method comprising producing...a label by imprinting a sheet material with markings.” (*Emphasis added.*) No such language can be found in the specification filed 18 MAR 04. There is no support for the method of manufacture being claimed.

2. Claims 56 and 57 are rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 55 – 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rubbert (previously cited) in view of US Patent No. 5,065,519 to Bindon.

5. Re – claim 55, Rubbert discloses the claimed invention including a method comprising producing a riflescope reticle with markings including a zeroed range value associated with orthogonally intersecting center vertical and center horizontal hairline, and having three or more range values, each associated with and at least three straight horizontal range-marker hairlines of sequentially incremental length disposed below said center horizontal hairline in vertically

bisected relationship with said center vertical hairline, as seen in FIGS. 1 & 2, for example, distance-measuring and aiming indicia 1, 3, 5, 7 & 9, for example, wherein said range values indicating ranges at which each intersection of said vertical hairline and each horizontal hairline represent points of impact for a corresponding bullet, cartridge, and rifle, except for (1) having four or more range values each associated with at least four straight horizontal range-marker hairlines and (2) the markings of the reticle being a label produced by imprinting a sheet material.

With respect to Rubbert only disclosing three such values/hairlines, it would have been obvious to one having ordinary skill in the art at the time the invention was made to duplicate the values/hairlines as many times as feasible/desirable, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. In this case, the invention would work regardless of the number of such values/hairlines provided that they were not too crowded on the reticle.

With respect to Rubbert not disclosing the method of producing the reticle label, Bindon teaches that it has been well known in the art to "to apply a white circle via paint, decal, etc. around the sapphire lens", set forth at col. 5, lines 25 – 39, for the purpose of improving day sighting characteristics. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the reticle of Rubbert to include a decal as taught by Bindon in order to improve sighting characteristics. With respect to the recited limitations of 'imprinting a sheet material', it is asserted that 'a decal' would inherently anticipate, and thus obviate, a sheet material having markings imprinted upon it. The method of manufacturing a decal, whether set

forth explicitly or not, would be obvious to one of ordinary skill in the art at the time the invention was made.

6. Re – claim 56, Rubbert in view of Bindon discloses the claimed invention including further comprising affixing said label to a rifle or riflescope mounted on a rifle, wherein said rifle is capable of firing said corresponding bullet and cartridge, and where said riflescope is equipped with a corresponding riflescope reticle having said four or more range-marker hairlines. Because Bindon discloses a decal, for example, and it is well known that decals are ‘labels affixed’ to whatever surface desired, this further step of the method of using the device would also be obvious to one of ordinary skill in the art at the time the invention was made. With respect to the ‘capable of’ recitation, it has been held that the recitation that an element is “capable of” performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138. In this case, either Rubbert or Bindon is so capable.

7. Re – claim 57, Rubbert in view of Bindon further discloses loading the rifle with a corresponding bullet and cartridge as an inherent element of firing a weapon.

Allowable Subject Matter

8. Claims 1 – 10 and 38 – 48 are allowed.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3641

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902 or email address bret.hayes@uspto.gov. The examiner can normally be reached Monday through Friday from 5:30 am to 2:00 pm, Eastern Standard Time.

The Central FAX Number is **571-273-8300**.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached at (571) 272 – 6873.

Bret Hayes

17-May-07

m.j.c.
MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER